

REMARKS

Claims 1-47 are pending in the present application. Claims 1-2, 6-8, 10, 12, 14, 17-19, 22-23, 28, 33, 40, 42 and 44 have been amended to correct typographical and grammatical errors. Claims 27 and 41 have been cancelled without prejudice. Claim 42 has been amended to specific recite locations on where the printing occurs and support for this amendment may be found at, for example, at page 11, lines 8-15 and page 12, line 4-page 14, line 2. Reconsideration of these claims in view of the amendments and the following remarks is respectfully requested.

Objection to the Abstract

The abstract has been amended to remove the term “comprising” as suggested in the Office Action. Thus, the objection should be withdrawn.

In The Specification

The Applicant previously claimed priority back to Application No. 60/409,331, which was filed on September 10, 2002 in the declaration. See Exhibit 1. The declaration was submitted within the time period set forth in 37 C.F.R. 1.78(a). The Patent Office acknowledged priority to Application No. 60/409,331 in its filing receipt. See Exhibit 2. The Applicant inadvertently did not include the claimed priority in the first sentence of the specification. The Applicant has added a Cross-Reference to Related Application section that includes the claimed priority to Application No. 60/409,331, as the first sentence of the specification. Pursuant to MPEP 201.11, since the declaration was timely filed and the information concerning the benefit claim was recognized by the Patent Office as shown by its inclusion on the first filing receipt, a petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required. Therefore, the Applicant respectfully requests that the Cross-Reference to Related Application to be added to the present application.

35 U.S.C § 112, Second Paragraph, Rejections

The Applicant disagrees that the phrase “to be utilized” is not a limitation in any patentable sense. To expedite prosecution, however, the Applicant has amended claims 1-2, 8, 14, 17-19, 28, 33, 40 and 44 to recite the term “configured” instead of “adapted” to more

positively recite the ability to perform. No new matter has been entered. Thus, the § 112, second paragraph, rejection on the term “adapted to be utilized” should be withdrawn.

Claim 19 has to be amended to recite “to the one or more sensors” from “to the sensor” as suggested in the Office Action. Claim 38 has been amended to recite “the first instrument encoded information” from the phrase “the first instrument encoded” as suggested in the Office Action. Claim 40 has been amended to recite that the second encoded calibration information is configured to be used by the second instrument to auto-calibrate the second instrument – not the first instrument as previously recited. Claim 42 has amended to recite where the particular layers are printed in relation to each other as discussed above. No new matter has been entered.

Therefore, all of the 35 U.S.C § 112, second paragraph, rejections should be withdrawn.

35 U.S.C § 103(a) Rejection

Independent Claim 1

Independent claim 1 recites “first encoded calibration information corresponding to a first sensor, wherein the first information is configured to be used by a first instrument to auto-calibrate, whereby the first instrument is calibrated for the first sensor” and “first additional encoded calibration information corresponding to a second sensor, wherein the additional information is distinct from the first information and is configured to be used by a second instrument different from the first instrument to auto-calibrate, whereby the second instrument is calibrated for the second sensor.”

As acknowledged in the Office Action, U.S. Patent No. 5,856,195 to Charlton (“Charlton”) “fail[s] to teach that the first and second encoded calibration information can be used to distinctly calibrate different meter instruments, wherein one type of meter instrument only recognizes one type of the calibration information.” Pages 6, 7 of the Office Action. Rather, Charlton discloses an autocalibration label that is generally designed by reference character 70. See FIG. 4; col. 3, lines 65-67 of Charlton. The autocalibration label 70 of Charlton is used with one meter, such as meter 10 of FIG. 1. The autocalibration label 70 uses several different calibration codes that may be used to distinguish between several types of sensors 32. Col. 8, lines 38-39 of Charlton.

The present invention is directed to using the proper calibrated sensors with the correct meter. See page 4, lines 14, 15 of the specification. One difficulty that is encountered is when a

new improved meter is introduced into the marketplace and the existing older meter is still in the marketplace for an unknown period of time. See page 4, lines 15-17 of the specification. A danger exists that test sensors that are calibrated for the new meter may be erroneously used with the existing older meter. See page 4, lines 17-18 of the specification. This will likely lead to inaccurate results of the analyte concentration. *Id.* Thus, with the present invention, an individual could use the auto-calibration information in both the first and second instruments in an accurate manner.

Charlton does not address such a problem. In fact, Charlton is focused on an autocalibration label that is utilized by one meter to auto-calibrate the meter for a particular type and lot of sensor included in the package. It would not have been obvious to one skilled in the art to use the disclosure of Charlton addressed to a one-meter solution in the present invention that is addressing a problem with using two meters.

Thus, independent claim 1 would not be obvious over Charlton and, should be in condition for allowance.

Dependent Claims 2-13

Dependent claims 2-13, which depend either directly or indirectly on claim 1 should also not be obvious over Charlton for at least the same reasons as discussed above with respect to claim 1. Therefore, claims 2-13 should be in a condition for allowance.

Independent Claims 14, 19 and 28

Independent claim 14 recites “first instrument encoded calibration information corresponding to the sensor and configured to be used by the first instrument to auto-calibrate such that the first instrument is calibrated for use with the sensor”; and “second instrument encoded calibration information corresponding to the sensor and configured to be used by the second instrument to auto-calibrate such that the second instrument is calibrated for use with the sensor”. Independent claims 19 and 28 recite an auto-calibration label comprising (a) “first instrument encoded calibration information corresponding to the one or more sensors and configured to be used by the first instrument to auto-calibrate such that the first instrument is calibrated for use with the one or more sensors,” and (b) “second instrument encoded calibration information corresponding to the one or more sensors and configured to be used by the second

instrument to auto-calibrate such that the second instrument is calibrated for use with the one or more sensors.”

For the same reasons as discussed with respect to claim 1, claims 13, 19 and 28 should be allowable over Charlton.

Dependent Claims 15-18, 20-26 and 29-32

Dependent claims 15-18, 20-26 and 29-32, which depend either directly or indirectly on claim 14, 19 or 28 should also not be obvious over Charlton for at least the same reasons as discussed above with respect to claim 1. Therefore, claims 15-18, 20-26 and 29-32 should be in a condition for allowance.

Independent Claim 33

Independent claim 33 recites “ first instrument encoded calibration information located in the area, the information being configured to be used by a first of the plurality of instruments to auto-calibrate such that the first instrument is calibrated for use with at least one of the one or more sensors to enable the first instrument to determine at least one of the predefined parameter values associated with a sample” and “second instrument encoded calibration information located in the area, the information being configured to be used by a second of the plurality of instruments to auto-calibrate such that the second instrument is calibrated for use with at least one of the one or more sensors to enable the second instrument to determine at least one of the predefined parameter values associated with a sample.” For the same reasons as discussed with respect to claim 1, claim 33 should be allowable over Charlton.

Dependent Claims 34-39

Dependent claims 34-39, which depend either directly or indirectly on claim 33 should also not be obvious over Charlton for at least the same reasons as discussed above with respect to claim 1. Therefore, claims 34-39 should be in a condition for allowance.

Independent Claims 40 and 42

Independent claim 40 recites (a) “a first conductive ink pattern defining first encoded calibration information configured to be used by a first instrument to auto-calibrate the first instrument”; (b) “a second conductive ink pattern overlaying the first conductive ink pattern and defining second encoded calibration information configured to be used by the second instrument to auto-calibrate the second instrument” and (c) “an insulating layer located between the first ink pattern and the second ink pattern. Independent claim 42 recites “printing a first conductive ink pattern layer comprising encoded calibration information on a substrate”; (b) “printing an insulating layer over the first conductive ink pattern so as to isolate the first conductive ink pattern”; and (c) “printing a second conductive ink pattern comprising encoded calibration information over the first conductive ink pattern such that the second conductive ink pattern is isolated from the first conductive ink pattern, the first instrument being distinct from the second instrument.”

For the same reasons as discussed with respect to claim 1, claims 40 and 42 should be allowable over Charlton.

Dependent Claim 43

Dependent claim 43, which depends directly on claim 42 should also not be obvious over Charlton for at least the same reasons as discussed above with respect to claim 1. Therefore, claim 41 should be in a condition for allowance.

Independent Claim 44

Independent claim 44 recites “applying to the substrate calibration information corresponding to the one or more sensors and a first instrument configured to use the one or more sensors”; and “applying to the substrate calibration information corresponding to the one or more sensors and a second instrument configured to use the one or more sensors, the first instrument being distinct from the second instrument.” For the same reasons as discussed with respect to claim 1, claim 44 should be allowable over Charlton.

Dependent Claims 45-47

Dependent claims 45-47, which depend either directly or indirectly on claim 44 should also not be obvious over Charlton for at least the same reasons as discussed above with respect to claim 1. Therefore, claims 45-47 should be in a condition for allowance.

CONCLUSION

The Applicant submit that the claims are in a condition for allowance and action toward that end is earnestly solicited. It is believed that no other fees are due; however, should any additional fees be required (except for payment of the issue fee), the Commissioner is authorized to deduct the fees from Nixon Peabody Account No. 50-4181/247082-000086USPT.

Respectfully submitted,



John C. Gatz

Registration No. 41,774

Nixon Peabody LLP

161 N. Clark Street, Suite 4800

Chicago, Illinois 60601

(312) 425-3900 - Telephone

(312) 425-3909 – Facsimile

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ATTORNEY FOR APPLICANT